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No. 430

IN THE

Supreme Court of the United States

October Term—1963

CERTIFIED CREDIT CORPORATION,
Appellant,

vs.

STANLEY J. BOWERS, TAX COMMISSIONER OF OHIO,
Appellee.

STATEMENT OPPOSING JURISDICTIONAL STATEMENT AND MOTION TO DISMISS OR AFFIRM

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I. STATEMENT OF ISSUE

The Ohio statutes provide for a tax on the shares of a dealer in intangibles which is based on capital employed in Ohio. The tax is determined by finding the ratio that gross receipts from the small loan business of a corporation that is conducted in Ohio bear to the entire gross receipts of the small loan business of the corporation. This single factor formula results in an apportioned tax on the shares.

This above formula, as applied to appellant, resulted in capital employed in Ohio being 95.41% for 1960 and 98.45% for 1961. This high percentage stems from appellant entering the life insurance, real estate and motel business by

investments in out-of-state subsidiaries. As of December 31, 1958, the investments aggregated $1,663,760. The comparable figures for December 31, 1959 and December 31, 1960 are $4,334,907 and $7,986,019, respectively.

Prior to 1960 appellant filed its dealer-in-intangible returns in conformity with the Ohio statutory formula. For 1960 and 1961 it used a property fraction which was rejected.

The issue is whether the Ohio apportioned tax on shares is repugnant to the due process and commerce clause of the United States Constitution.

II. NO SUBSTANTIAL FEDERAL QUESTION IS PRESENTED

A state income tax under an apportionment was sustained in *Northwestern States Portland Cement Company* vs. *Minnesota*, 358 U. S., 450 (1959).

A franchise tax may be measured by the ratio of gross receipts of a company's business in a state to its total gross receipts. *Ford Motor Co.* v. *Beauchamp, Secy. of State*, 308 U. S., 331 (1939).

A tax on capital stock of a railroad, apportioned according to miles operated in a state and total mileage, was upheld in *Pullman's Palace Car Co.* vs. *Pennsylvania*, 141 U. S., 18 (1891).

The imposed Ohio tax is not an *ad valorem* assessment upon any of the underlying properties making up net worth.

The Standard Oil Co. vs. *Peck*, 342 U. S., 382 (1952), involved an *ad valorem* tax on boats and barges traversing the Ohio river. They were registered in Cincinnati. The tax, which was not apportioned, was struck down. The above, and other cases cited by appellant, do not involve a sufficient similarity of facts to require the legal principles therein set forth to make them here applicable.

An apportionment formula will be sustained unless it is *palpably unreasonable*. The burden was upon appellant to prove such to be the situation and that there was taxation of extraterritorial values. *Railway Express Agency* vs. *Virginia*, 358 U. S., 434 (1959). The Ohio Supreme Court decision makes this plain wherein it says: "* * * there is no evidence to show that Ohio is taxing more than its fair share of the 'capital employed in this state' * * *".

The federal constitutional question herein presented has been so definitely determined that no substantial question is presented by appellant to entitle it to invoke the jurisdiction of the United States Supreme Court.

Wherefore, it is respectfully moved that this appeal be dismissed or that the judgment and decree of the Supreme Court of Ohio be affirmed.

Respectfully submitted,

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